



# House of Representatives

## **File No. 776**

General Assembly

January Session, 2001

**(Reprint of File No. 352)**

House Bill No. 6573  
As Amended by House Amendment  
Schedules "A" and "B"

Approved by the Legislative Commissioner  
May 18, 2001

**AN ACT CONCERNING THE RIGHTS OF PERSONS UNDER  
SUPERVISION OF THE COMMISSIONER OF MENTAL RETARDATION  
AND GUARDIANSHIP OF PERSONS WITH MENTAL RETARDATION.**

Be it enacted by the Senate and House of Representatives in General  
Assembly convened:

1       Section 1. Section 17a-210 of the general statutes is repealed and the  
2       following is substituted in lieu thereof:

3       (a) There shall be a Department of Mental Retardation. The  
4       Department of Mental Retardation, with the advice of a Council on  
5       Mental Retardation, shall be responsible for the planning,  
6       development and administration of complete, comprehensive and  
7       integrated state-wide services for persons with mental retardation and  
8       persons medically diagnosed as having Prader-Willi syndrome. The  
9       Department of Mental Retardation shall be under the supervision of a  
10      Commissioner of Mental Retardation, who shall be appointed by the  
11      Governor in accordance with the provisions of sections 4-5 to 4-8,  
12      inclusive. The Council on Mental Retardation may advise the  
13      Governor on the appointment. The commissioner shall be a person  
14      who has background, training, education or experience in

15 administering programs for the care, training, education, treatment  
16 and custody of persons with mental retardation. The commissioner  
17 shall be responsible, with the advice of the council, for: [planning] (1)  
18 Planning and developing complete, comprehensive and integrated  
19 state-wide services for persons with mental retardation; [for] (2) the  
20 implementation and where appropriate the funding of such services;  
21 and [for] (3) the coordination of the efforts of the Department of  
22 Mental Retardation with those of other state departments and  
23 agencies, municipal governments and private agencies concerned with  
24 and providing services for persons with mental retardation. The  
25 commissioner shall be responsible for the administration and  
26 operation of the state training school, state mental retardation regions  
27 and all state-operated community-based residential facilities  
28 established for the diagnosis, care and training of persons with mental  
29 retardation. The commissioner shall be responsible for establishing  
30 standards, providing technical assistance and exercising the requisite  
31 supervision of all state-supported residential, day and program  
32 support services for persons with mental retardation and work activity  
33 programs operated pursuant to section 17a-226. The commissioner  
34 shall conduct or monitor investigations into allegations of abuse and  
35 neglect and file reports as requested by state agencies having statutory  
36 responsibility for the conduct and oversight of such investigations. The  
37 commissioner shall stimulate research by public and private agencies,  
38 institutions of higher learning and hospitals, in the interest of the  
39 elimination and amelioration of retardation and care and training of  
40 persons with mental retardation.

41 (b) The commissioner shall be responsible for the development of  
42 criteria as to the eligibility of any person with mental retardation for  
43 residential care in any public or state-supported private institution  
44 and, after considering the recommendation of a properly designated  
45 diagnostic agency, may assign such person to a public or state-  
46 supported private institution. [He] The commissioner may transfer  
47 such persons from one such institution to another when necessary and  
48 desirable for their welfare, provided such person and such person's

49 parent, conservator, guardian or other legal representative [receives]  
50 receive written notice of their right to object to such transfer at least ten  
51 days prior to the proposed transfer of such person from any such  
52 institution or facility. Such prior notice shall not be required when  
53 transfers are [made between residential units within the training  
54 school or a state mental retardation region or when] necessary to avoid  
55 a serious and immediate threat to the life or physical or mental health  
56 of such person or others residing in such institution or facility. The  
57 notice required by this subsection shall notify the recipient of his or her  
58 right to [request a hearing in accordance with subsection (c) of this  
59 section] object to such transfer, except in the case of an emergency  
60 transfer as provided in this subsection, and shall include the name,  
61 address and telephone number of the Office of Protection and  
62 Advocacy for Persons with Disabilities. In the event of an emergency  
63 transfer, [such notice] the notice required by this subsection shall  
64 notify the recipient of his or her right to request a hearing in  
65 accordance with subsection (c) of this section and shall be given within  
66 ten days following [said] the emergency transfer. In the event [that a  
67 hearing is requested prior] of an objection to the proposed transfer, the  
68 commissioner shall conduct a hearing in accordance with subsection  
69 (c) of this section and the transfer shall be stayed pending final  
70 disposition of the hearing.

71 (c) The parent, guardian, conservator or other legal representative of  
72 any person with mental retardation who resides at any institution or  
73 facility operated by the Department of Mental Retardation, or any  
74 person with mental retardation himself or herself, who is eighteen  
75 years of age or older and who resides at any such institution or facility,  
76 may [make a request, in writing, to the Commissioner of Mental  
77 Retardation for a hearing on] object to any transfer of such person from  
78 one institution or facility to another for any reason other than a  
79 medical reason or an emergency, or may request such a transfer. In the  
80 event of any such objection or request, the commissioner shall conduct  
81 a hearing on such proposed transfer. In any such transfer hearing, the  
82 proponent of a transfer shall have the burden of showing, by clear and

83 convincing evidence, that the proposed transfer is in the best interest  
84 of the resident being considered for transfer and that the facility and  
85 programs to which transfer is proposed (1) are safe and effectively  
86 supervised and monitored, and (2) provide a greater opportunity for  
87 personal development than the resident's present setting. Such hearing  
88 shall be conducted in accordance with the provisions of [sections 4-  
89 176e to 4-184, inclusive] chapter 54.

90 (d) The parent, guardian, conservator or other legal representative  
91 of a person, or the person himself or herself, may request a hearing for  
92 any final determination by the department which [(1)] denies such  
93 person eligibility for programs and services of the department. [, (2)  
94 approves a program for such person which includes the use of  
95 behavior-modifying medications or aversive procedures, or (3)  
96 determines that community placement is inappropriate for such  
97 person placed under the direction of the commissioner.] A request for  
98 a hearing shall be made in writing to the commissioner. Such hearing  
99 shall be conducted in accordance with the provisions of [sections 4-  
100 176e to 4-184, inclusive] chapter 54.

101 (e) The parent, guardian, conservator or other legal representative of  
102 a person, or the person himself or herself, may object to (1) a proposed  
103 approval by the department of a program for such person which  
104 includes the use of behavior-modifying medications or aversive  
105 procedures, or (2) a proposed determination of the department that  
106 community placement is inappropriate for such person placed under  
107 the direction of the commissioner. The department shall provide  
108 written notice of any such proposed approval or determination to the  
109 parent, guardian, conservator or other legal representative of such  
110 person, or the person himself or herself, at least ten days prior to  
111 making such approval or determination. In the event of an objection to  
112 such proposed approval or determination, the commissioner shall  
113 conduct a hearing in accordance with the provisions of chapter 54.

114 Sec. 2. Section 17a-238 of the general statutes is repealed and the  
115 following is substituted in lieu thereof:

116 (a) No person placed or treated under the direction of the  
117 Commissioner of Mental Retardation in any public or private facility  
118 shall be deprived of any personal, property or civil rights, except in  
119 accordance with due process of law.

120 (b) Each person placed or treated under the direction of the  
121 Commissioner of Mental Retardation in any public or private facility  
122 shall be protected from harm and receive humane and dignified  
123 treatment which is adequate for [his] such person's needs and for [his]  
124 the development [to his] of such person's full potential at all times,  
125 with full respect for [his] such person's personal dignity and right to  
126 privacy consistent with [his] such person's treatment plan as  
127 determined by the commissioner. No treatment plan or course of  
128 treatment for any person placed or treated under the direction of the  
129 commissioner shall include the use of an aversive device which has not  
130 been tested for safety and efficacy and approved by the federal Food  
131 and Drug Administration except for any treatment plan or course of  
132 treatment including the use of such devices which was initiated prior  
133 to October 1, 1993. No treatment plan or course of treatment prescribed  
134 for any person placed or treated under the direction of the  
135 commissioner shall include the use of aversive procedures except in  
136 accordance with procedures established by the Commissioner of  
137 Mental Retardation. For purposes of this subsection, "aversive  
138 procedure" means the contingent use of an event which may be  
139 unpleasant, noxious or otherwise cause discomfort to alter the  
140 occurrence of a specific behavior or to protect an individual from  
141 injuring himself or herself or others and may include the use of  
142 physical isolation and mechanical and physical restraint. Nothing in  
143 this subsection shall prohibit persons who are not placed or treated  
144 under the direction of the Commissioner of Mental Retardation from  
145 independently pursuing and obtaining any treatment plan or course of  
146 treatment as may otherwise be authorized by law. The commissioner  
147 shall adopt regulations, in accordance with chapter 54, to carry out the  
148 provisions of this subsection.

149 (c) The Commissioner of Mental Retardation shall adopt

150 regulations, in accordance with the provisions of [sections 4-166 to 4-  
151 176, inclusive] chapter 54, with respect to each facility or institution  
152 under [his] the jurisdiction of the commissioner, with regard to the  
153 following: (1) Prohibiting the use of corporal punishment; (2) when  
154 and by whom therapies may be used; (3) which therapies may be used;  
155 and (4) when a person may be placed in restraint or seclusion or when  
156 force may be used upon a person.

157 (d) A copy of any order prescribing the use of therapy, restraint or  
158 seclusion in accordance with the regulations adopted [in] under  
159 subsection (c) of this section shall be made a part of the person's  
160 permanent clinical record together with the reasons for each such  
161 order and made available in compliance with existing statutes relating  
162 to the right to know.

163 (e) The Commissioner of Mental Retardation shall ensure that each  
164 person placed or treated under [his] the commissioner's direction in  
165 any public or private facility is afforded the following rights and  
166 privileges: (1) The right to prompt, sufficient and appropriate medical  
167 and dental treatment; (2) the right to communicate freely and privately  
168 with any person, including, but not limited to, an attorney or other  
169 legal representative of [his] the person's choosing; (3) the right to  
170 reasonable access to a telephone, both to make and receive calls in  
171 private, unless such access is used in violation of any federal or state  
172 statute; (4) the right to send and receive unopened mail and to make  
173 reasonable requests for assistance in the preparation of  
174 correspondence; (5) the safety of each person's personal effects shall be  
175 assured including the provision of reasonably accessible individual  
176 storage space; (6) the right to be free from unnecessary or excessive  
177 physical restraint; (7) the right to voice grievances without  
178 interference; (8) the right to a nourishing and well-balanced diet; (9)  
179 the right to be employed outside a facility and to receive assistance in  
180 his or her efforts to secure suitable employment. The department shall  
181 encourage the employment of such persons and shall promote the  
182 training of such persons for gainful employment, and all benefits of  
183 such employment shall accrue solely to the person employed; (10) the

184 right to have the complete record maintained by the Department of  
185 Mental Retardation concerning such person released for review,  
186 inspection and copying to such person's attorney or other legal  
187 representative notwithstanding any provisions of subsection (g) of  
188 section 4-193 or section 4-194; and (11) the right to receive or purchase  
189 his or her own clothing and personal effects, including toilet articles,  
190 and the right to wear such clothing and use such personal effects  
191 except where determined to be dangerous to the health or safety of the  
192 individual or others.

193 (f) The Commissioner of Mental Retardation shall require the  
194 attending physician of any person placed or treated under [his] the  
195 direction of the commissioner to obtain informed written consent from  
196 the following persons prior to authorizing any surgical procedure or  
197 any medical treatment, excluding routine medical treatment which is  
198 necessary to maintain the general health of a resident or to prevent the  
199 spread of any communicable disease: (1) The resident if [he] such  
200 resident is eighteen years of age or over or is legally emancipated and  
201 competent to give such consent; (2) the parent of a resident under  
202 eighteen years of age who is not legally emancipated; or (3) the legal  
203 guardian or conservator of a resident of any age who is adjudicated  
204 unable to make informed decisions about matters relating to [his] such  
205 resident's medical care. The person whose consent is required shall be  
206 informed of the nature and consequences of the particular treatment or  
207 surgical procedure, the reasonable risks, benefits and purpose of such  
208 treatment or surgical procedure and any alternative treatment or  
209 surgical procedures which are available. The consent of any resident or  
210 of any parent, guardian or conservator of any resident may be  
211 withdrawn at any time prior to the commencement of the treatment or  
212 surgical procedure. The regional or training school director having  
213 custody and control of a resident of any facility may authorize  
214 necessary surgery for [any] such resident where, in the opinion of the  
215 resident's attending physician, the surgery is of an emergency nature  
216 and there is insufficient time to obtain the required written consent  
217 provided for in this section. The attending physician shall prepare a

218 report describing the nature of the emergency which necessitated such  
219 surgery and shall file a copy of such report in the patient's record.

220 (g) The commissioner's oversight and monitoring of the medical  
221 care of persons placed or treated under the direction of the  
222 commissioner does not include the authority to make treatment  
223 decisions, except in limited circumstances in accordance with statutory  
224 procedures. In the exercise of such oversight and monitoring  
225 responsibilities, the commissioner shall not impede or seek to impede a  
226 properly executed medical order to withhold cardiopulmonary  
227 resuscitation. For purposes of this subsection, [a] "properly executed  
228 medical order to withhold cardiopulmonary resuscitation" means (1) a  
229 written order by the attending physician; (2) in consultation and with  
230 the consent of the patient or a person authorized by law; (3) when the  
231 attending physician is of the opinion that the patient is in a terminal  
232 condition, as defined in [subsection] subdivision (3) of section 19a-570,  
233 which condition will result in death within days or weeks; and (4)  
234 when such physician has requested and obtained a second opinion  
235 from a Connecticut licensed physician in the appropriate specialty that  
236 confirms the patient's terminal condition; [. A "properly executed  
237 medical order to withhold cardiopulmonary resuscitation" also] and  
238 includes the entry of such an order when the attending physician is of  
239 the opinion that the patient is in the final stage of a terminal condition  
240 but cannot state that the patient may be expected to expire during the  
241 next several days or weeks, or, in consultation with a physician  
242 qualified to make a neurological diagnosis, deems the patient to be  
243 permanently unconscious, provided the commissioner has reviewed  
244 the decision with the department's director of community medical  
245 services, the family and guardian of the patient and others who the  
246 commissioner deems appropriate, and determines that the order is a  
247 medically acceptable decision.

248 (h) Any person applying for services from the Commissioner of  
249 Mental Retardation or any person placed by a probate court under the  
250 direction of the Commissioner of Mental Retardation, and such  
251 person's parents or guardian, shall be informed orally and in writing at



252 the time of application or placement of the rights guaranteed by this  
253 section and the provisions of subdivision (5) of section 46a-11. A  
254 summary of [these] such rights shall be posted conspicuously in the  
255 public areas of every public or private facility providing services to  
256 persons under the care of the Commissioner of Mental Retardation.

257 Sec. 3. Section 45a-677 of the general statutes is repealed and the  
258 following is substituted in lieu thereof:

259 (a) The court may assign to a limited guardian of [the] a mentally  
260 retarded person any portion of the duties and powers listed in  
261 subsection (d) of this section for those particular areas in which the  
262 respondent lacks the capacity to meet the essential requirements for  
263 [his] such respondent's physical or mental health or safety.

264 (b) A limited guardian may also be assigned the duty to assist the  
265 respondent in those particular areas in which the capacity of [such  
266 person] the respondent to meet the essential requirements of [his] such  
267 respondent's physical or mental health or safety, protect [his] such  
268 respondent's rights, obtain necessary services, or to fulfill [his] such  
269 respondent's civil duties is impaired, as well as in other ways not  
270 specifically prohibited by sections 45a-668 to 45a-684, inclusive.

271 (c) A limited guardian of [the] a mentally retarded person shall have  
272 only such of the duties and responsibilities and powers of a guardian  
273 of [the] a mentally retarded person under subsection (d) of this section  
274 as the court shall specify based upon its findings with regard to the  
275 individual need of the respondent for supervision. The guardian shall  
276 have the duty to report to the probate court which appointed such  
277 limited guardian at least annually the condition of the respondent. The  
278 preceding duties, responsibilities and powers shall be carried out  
279 within the limitations of the resources available to the ward, either  
280 through [his] the ward's own estate or by reason of private or public  
281 assistance.

282 (d) The court may assign to a limited guardian the custody of the  
283 ward for the purpose of exercising any, but not all, of the following

284 limited duties and powers, in order to assist the ward in achieving  
285 self-reliance: (1) To assure and consent to a place of abode outside the  
286 natural family home, (2) to consent to specifically designed  
287 educational, vocational or behavioral programs, (3) to consent to the  
288 release of clinical records and photographs, (4) to assure and consent  
289 to routine, elective and emergency medical and dental care, and (5)  
290 other specific limited powers to assure and consent to services  
291 necessary to develop or regain to the maximum extent possible the  
292 ward's capacity to meet essential requirements. All plenary guardians  
293 and limited guardians appointed pursuant to sections 45a-668 to  
294 45a-684, inclusive, shall also have a duty to assure the care and comfort  
295 of the ward within the limitations of their appointment, and within the  
296 limitations of the resources available to the ward either through [his]  
297 the ward's own estate or by reason of private or public assistance.

298 (e) A plenary guardian or limited guardian of [the] a mentally  
299 retarded person shall not have the power or authority: (1) To cause the  
300 ward to be admitted to any institution for treatment of the mentally ill,  
301 except in accordance with the provisions of sections 17a-75 to 17a-83,  
302 inclusive, 17a-456 to 17a-484, inclusive, 17a-495 to 17a-528, inclusive,  
303 17a-540 to 17a-550, inclusive, 17a-560 to 17a-576, inclusive, 17a-615 to  
304 17a-618, inclusive, and 17a-621 to 17a-664, inclusive, and chapter 420b;  
305 (2) to cause the ward to be admitted to any training school or other  
306 facility provided for the care and training of the mentally retarded if  
307 there is a conflict concerning such admission between the guardian  
308 and the mentally retarded person or next of kin, except in accordance  
309 with the provisions of sections 17a-274 and 17a-275; (3) to consent on  
310 behalf of the ward to a sterilization, except in accordance with the  
311 provisions of sections 45a-690 to 45a-700, inclusive; (4) to consent on  
312 behalf of the ward to psychosurgery, except in accordance with the  
313 provisions of section 17a-543; (5) to consent on behalf of the ward to  
314 the termination of [that person's] the ward's parental rights, except in  
315 accordance with the provisions of sections 45a-706 to 45a-709,  
316 inclusive, 45a-715 to 45a-718, inclusive, 45a-724 to 45a-737, inclusive,  
317 and 45a-743 to 45a-757, inclusive; (6) to consent on behalf of the ward

318 to the performance of any experimental biomedical or behavioral  
319 medical procedure or participation in any biomedical or behavioral  
320 experiment, unless it is intended to preserve the life or prevent serious  
321 impairment of the physical health of the ward or it is intended to assist  
322 the ward to regain [his] the ward's abilities and has been approved for  
323 [that person] the ward by the court; (7) to admit the ward to any  
324 residential facility operated by an organization by whom such  
325 guardian is employed, except in accordance with the provisions of  
326 section 17a-274; (8) to prohibit the marriage or divorce of the ward;  
327 and (9) to consent on behalf of the ward to an abortion or removal of a  
328 body organ, except in accordance with applicable statutory procedures  
329 when necessary to preserve the life or prevent serious impairment of  
330 the physical or mental health of the [respondent] ward.

331 (f) A plenary guardian or limited guardian shall submit a report to  
332 the court: (1) Annually; (2) when the court orders additional reports to  
333 be filed; or (3) when there is a significant change in the capacity of the  
334 ward to meet the essential requirements for [his] the ward's physical  
335 health or safety; (4) when the plenary guardian or limited guardian  
336 resigns or is removed; and (5) when the guardianship is terminated.

337 (g) Such reports shall be submitted on a form provided by the Office  
338 of the Probate Court Administrator and shall contain the following  
339 information: (1) Significant changes in the capacity of the ward to meet  
340 the essential requirements for [his] the ward's physical health or safety;  
341 (2) the services being provided to the ward and the relationship of  
342 those services to the individual guardianship plan; (3) the significant  
343 actions taken by the limited guardian of [the] a mentally retarded  
344 person or plenary guardian of [the] a mentally retarded person during  
345 the reporting period; (4) any significant problems relating to the  
346 guardianship which have arisen during the reporting period; and (5)  
347 whether such guardianship, in the opinion of the guardian, should  
348 continue, be modified, or be terminated, and the reasons therefor.

349 (h) When any mentally retarded person for whom a guardian has  
350 been appointed becomes a resident of any town in the state in a

351 probate district other than the one in which a guardian was appointed,  
352 or becomes a resident of any town in the state to which the  
353 guardianship file has been transferred under this section, such court in  
354 that district may, upon motion of any person deemed by the court to  
355 have sufficient interest in the welfare of the respondent, including, but  
356 not limited to, the guardian, the Commissioner of Mental Retardation  
357 or [his] the commissioner's designee, or a relative of the person under  
358 guardianship, transfer the file to the probate district in which the  
359 person under guardianship resides at the time of the application,  
360 provided the transfer is in the best interest of the mentally retarded  
361 person. A transfer of the file shall be accomplished by the probate  
362 court in which the guardianship matter is on file by making copies of  
363 all documents in the court and certifying each of them and then  
364 causing them to be delivered to the court for the district in which the  
365 person under guardianship resides. When the transfer is made, the  
366 court of probate in which the person under guardianship resides at the  
367 time of transfer shall thereupon assume jurisdiction over the  
368 guardianship and all further accounts shall be filed with such court.

369 (i) A plenary guardian or limited guardian of a mentally retarded  
370 person and, to the extent appropriate, such person and such person's  
371 family, shall be the primary decision maker with respect to programs  
372 needed by such person and policies and practices affecting the well-  
373 being of such person within the authority granted by the court  
374 pursuant to this section, provided any such decision does not conflict  
375 with the requirements of section 17a-238, as amended by this act. In  
376 making any such decision, the plenary guardian or limited guardian  
377 shall consult with the ward and appropriate members of the ward's  
378 family, where possible. A limited guardian shall be the primary  
379 decision maker only with respect to such duties assigned to the limited  
380 guardian by the court. The provisions of this subsection shall be  
381 included in any court order appointing a plenary guardian or limited  
382 guardian of a mentally retarded person.

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

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### **OFA Fiscal Note**

**State Impact:** Potential Minimal Cost

**Affected Agencies:** Department of Mental Retardation

**Municipal Impact:** None

### **Explanation**

#### **State Impact:**

The bill as amended makes various changes to the guardian statutes regarding Department of Mental Retardation clients and clarifies current practice by providing a regional or training school director the authority to consent to necessary emergency surgery on behalf of the client. These provisions will result in no cost to the department.

The bill as amended also alters provisions regarding the objecting to a department-approved program, decision on an inappropriate placement or transfer of a client. Although currently, an individual is allowed to request a hearing for a final determination by the department, there have not been any hearings held due to transfers, use of behavior modifying medications or inappropriate community placements over the past three years. It is anticipated that the bill as amended may result in an increase in the number of hearings. Any impact is anticipated to be minimal and can be absorbed within the available resources of the department. The estimated cost per hearing is \$325.

House "A" makes changes to the guardian statutes that will result

in no cost to the department.

House "B" replaces the underlying bill and House "A" and becomes the bill as amended with the corresponding impact as referenced above.

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**OLR Amended Bill Analysis**

HB 6573 (as amended by House "A" and "B")\*

**AN ACT CONCERNING THE RIGHTS OF PERSONS UNDER  
SUPERVISION OF THE COMMISSIONER OF MENTAL  
RETARDATION.**

**SUMMARY:**

This bill makes a number of changes affecting the services, treatments, program needs, placements, and transfers for persons with mental retardation and those that can make decisions for these individuals.

The bill specifies that a plenary or limited guardian of a mentally retarded person, and where appropriate, his family, is the primary decision maker for the person concerning his well being.

It also allows the parent, guardian, conservator, or other legal representative of a mentally retarded person to object to determinations by the Department of Mental Retardation (DMR) concerning certain medications, procedures, and placements.

The bill makes changes to the existing notice process for transferring a mentally retarded person from one facility to another. It also requires notice when DMR transfers a person between residential units within the training school or mental retardation region.

The bill makes it clear that the director who under current law can consent to necessary emergency surgery is the regional or training school director who has custody and control of a resident of DMR facility. This applies when there is not enough time to obtain consent from the resident, his parent, or guardian. The bill also makes technical changes.

\*House Amendment "A" adds provisions on the decision-making authority of plenary and limited guardians.

\*House Amendment "B" replaces the entire bill as amended, retaining

the original bill's (File 352) provision on consent to emergency surgery by the regional or training school director and adding provisions on (1) decision-making authority of plenary and limited guardians; (2) objections to certain treatments and placements; and (3) transfer of individuals.

EFFECTIVE DATE: October 1, 2001

### **PRIMARY DECISION MAKERS**

The bill specifies that a plenary or limited guardian of a mentally retarded person, and to the extent possible his family, is the primary decision maker concerning the person's program needs and other policies and practices affecting his well being, subject to authority granted by the Probate Court. The limited guardian is the primary decision maker only for those duties assigned him by the court.

The bill requires the plenary or limited guardian to consult with the person and appropriate family members, where possible, when making decisions. Such decisions cannot conflict with the legal rights of a mentally retarded person to humane and dignified care and treatment.

These decision-making provisions must be included in any court order appointing a plenary or limited guardian.

### **OBJECTIONS TO CERTAIN TREATMENT AND PLACEMENT**

The bill allows the parent, guardian, conservator or other legal representative of a mentally retarded person to object to (1) DMR's proposed approval of a program that includes behavior modifying medications or aversive procedures or (2) a proposed DMR determination that community placement is inappropriate.

DMR must give written notice of its proposed approval or determination to the parent, guardian, conservator, or other legal representative, or the person himself at least 10 days before making it. If there is an objection, DMR must hold a hearing.

### **TRANSFER OF INDIVIDUALS**

The law allows DMR to transfer persons with metal retardation from



one institution to another when necessary and desirable for the person's welfare. "Institution" includes both public and state supported private institutions. The person and his parent, guardian, conservator, or other legal representative must get written notice of their right to request a hearing at least 10 days before the proposed transfer, except for emergency transfers. The bill clarifies that the notice is of the person's right to object to the transfer. If an objection is made, DMR must hold a hearing.

The bill subjects proposed transfers between residential units within a training school or a state mental retardation region to the prior notice requirement. Currently, such transfers are not subject to prior notice.

In case of emergency transfer, the law requires that notice be given within 10 days after the transfer. The bill clarifies that the notice must notify the recipient of his right to a hearing. The bill also makes it clear that a person can ask for a transfer.

## **BACKGROUND**

### ***Legislative history***

On April 25, the House passed the bill (File 352) as amended by House "A" and then referred it to the Judiciary Committee. That committee reported it favorably without change on May 2. On May 16, the House passed the bill as amended by House "A" and "B."

## **COMMITTEE ACTION**

### Public Health Committee

Joint Favorable Report

Yea 24      Nay 0

### Judiciary Committee

Joint Favorable Report

Yea 38      Nay 0